Center for Responsive Politics
OpenSecrets.org

Senator Charles Schumer, Chairman
U.S. Senate Committee on Rules and Administration
305 Russell Senate Office Building
Washington D.C., 20510

**Statement of Sheila Krumholz, Executive Director of the Center for Responsive Politics**
**Before the U.S. Senate Committee on Rules and Administration**
**Regarding *Corporate America vs. The Voter: Examining the Supreme Court's Decision to Allow Unlimited Corporate Spending in Elections***
**February 2, 2010**

Mr. Chairman, and members of the committee, thank you for allowing the Center for Responsive Politics to submit this written testimony to the U.S. Senate Committee on Rules and Administration regarding *Citizens United v. Federal Election Commission* and its impact on campaign finance.

My name is Sheila Krumholz. I am executive director of the Center for Responsive Politics, a nonpartisan, nonprofit research organization based here in Washington that monitors and analyzes campaign contributions in federal elections, as well as other forms of money and elite influence in U.S. politics. The Center is best known for our award-winning Web site, OpenSecrets.org, where we make freely available our analysis of publicly disclosed information about the role of money in politics.

Founded in 1983 by two former senators, a Republican and a Democrat, the Center's reason for existence is simple: to inform citizens about who is paying for federal elections and who is in the position to exercise influence over the elected officials who represent the public in our nation's capital. We can do this because the financing of federal campaigns is open to public scrutiny.

In late January, the U.S. Supreme Court affirmed that citizens should be able to see whether "elected officials are 'in the pocket' of so-called moneyed interests." As part of an 8-1 ruling in *Citizens United v. Federal Election Commission*, the majority of justices declared that "transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."

But in *Citizens United*, the Court additionally struck down limitations on the political expenditures of for-profit and nonprofit corporations, and in doing so, raised new questions about potential influence-buying.

The Court's 5-4 decision to overturn these restrictions has brought us to an unprecedented situation: Corporations are now free to spend unlimited sums on independent expenditures, even in the closing weeks of elections.

No one knows exactly how this will play out. However, over the course of our 26-year history of monitoring the confluence of money and politics, we have seen time and time again that corporations and unions have the appetite to use their financial largess to wield control over politics and elections. It stands to reason that some, if not many, organizations will take advantage of this new loophole.

Before the Bipartisan Campaign Reform Act of 2002 was signed into law, many organizations contributed hundreds of millions of dollars directly to political parties via soft money donations. Between 1991 and 2002, organizations – not individuals – accounted for approximately two-thirds of all soft money donations, and they gave more than $1 billion in soft money contributions.

**Soft Money from Organizations, 1991 - 2002**

| Cycle | Total | Dems | Repubs | % Dems | % Repubs |
|---|---|---|---|---|---|
| 1992 | $60,907,511 | $25,439,223 | $35,458,288 | 41.8% | 58.2% |
| 1994 | $67,152,549 | $31,781,295 | $35,369,254 | 47.3% | 52.7% |
| 1996 | $172,142,366 | $74,464,702 | $97,185,029 | 43.3% | 56.5% |
| 1998 | $137,653,896 | $51,828,344 | $85,641,044 | 37.7% | 62.2% |
| 2000 | $283,975,950 | $130,631,845 | $152,625,079 | 46.0% | 53.7% |
| 2002 | $297,789,476 | $124,351,208 | $173,127,760 | 41.8% | 58.1% |
| TOTAL | $1,019,621,748 | $438,496,617 | $579,406,454 | 43.0% | 56.9% |

source: OpenSecrets.org

Domestic subsidiaries of foreign corporations also have a history of spending both hard and soft money on U.S. elections. During the 1996 election, the Center for Responsive Politics identified 128 U.S. subsidiaries of 93 foreign-owned companies – from 16 countries – that contributed soft money and/or PAC contributions to federal candidates. In total, these companies contributed more than $12.5 million, with just over $8 million coming from soft money sources. During the entire 12 years in which soft money was disclosed to the Federal Election Commission, CRP conservatively estimates that at least $30 million came from U.S. subsidiaries of foreign-owned corporations. In the 2008 election cycle, PAC donations from U.S. subsidiaries of foreign companies rose to nearly $17 million.

After BCRA's enactment, corporations, trade associations and unions have continued to pour money into campaign war chests via political action committees. During the 2008 election cycle alone, PACs contributed some $465 million to federal candidates and party committees – with business PACs outspending labor PACs about four-to-one. Additionally, independent

expenditures by all PACs skyrocketed during the 2008 cycle; the $135 million spent on such advertisements represents an increase of 100 percent above 2004 spending levels.

In the wake of *Citizens United*, unions, trade associations and both for-profit and nonprofit corporations may pour even more money into independent expenditures. In addition, many are concerned that the rules prohibiting foreign national corporations from using their domestic subsidiaries to influence U.S. elections are not adequate now that corporations may make independent expenditures. Much of this corporate spending could potentially come in the eleventh hour of a campaign when the target may not be capable of an effective response, for want of time, funds or both.

Certainly, risk-adverse corporations may not wish to have their fingerprints on new, negative advertisements and may not opt to take advantage of this new loophole. And these corporations will continue to have the ability to use existing under-the-radar methods to sponsor issue advocacy through 501(c) organizations and other committees.

Furthermore, some corporations may simply opt to sponsor positive messages – explicitly encouraging fund-raising for specific candidates and committees. Such expenditures could become another vehicle for those who seek to gain access to the halls of Congress. What better way to move legislation than to demonstrate bundling prowess and rake in millions with a laudatory spot?

With new paths and potentially greater sums of money set to enter into the political bloodstream, transparency is now more essential than ever. Yet disclosure rules, as they currently exist, are not enough. Too often the picture gets muddied because of vague, incomplete and even non-existent reporting requirements. We want to see more timely, more complete and more effective reporting and disclosure.

First and foremost, the Federal Election Commission's rulemaking regarding donor disclosure requirements for independent expenditures is entirely insufficient. Under current statute (Section 434(c)(2)(C)), non-profit groups can raise money directly from corporations, unions and whatever other domestic sources and, as long as those contributions or dues were not made for the express purpose of making independent expenditures, they do not need to disclose those donors. The Supreme Court justices that affirmed the crucial role played by disclosure clearly did not examine the exact language of the FEC's rulemaking in this area. This provision has been read narrowly, resulting in relatively few people being reported to the Federal Election Commission as giving for the purpose of making independent expenditures. Congress should examine this issue and address it, ensuring the disclosure of all donors whose donations fund any portion of any independent expenditure. Strengthening disclosure requirements in order to close this loophole is urgently needed.

Contrary to the opinion of some people, the state of other aspects of campaign finance disclosure leaves much to be desired. For instance, Senate committees still file campaign reports on paper. In 2010, why must we still wait weeks and months after an election – long after we have been able to retrieve data for all other filers – to search, sort and download donations and expenses for

Senate committees? Especially in an age when senators are using Twitter while attending closed-door meetings, electronic filing of campaign reports should be mandatory. Senators should quickly adopt S. 482 – cosponsored by some of you here – to bring the Senate's disclosure methods into the 21st century.

Additionally, we can't leave it up to the campaigns to voluntarily disclose the names of their major fund-raisers. The public needs to be able to gauge for itself whether the people elevated to political appointments got there based on the merits or by virtue of their prowess as elite "bundlers." In 2007, then-Sen. Barack Obama proposed a bill that would require the disclosure of all bundlers who raise more than $50,000. The bill never made it past committee. This legislation should be revived – and passed.

Lastly, we've seen little improvement in expenditure transparency over the years. Currently, donors who want to know how their money was spent can't really tell, and watchdog groups fear that the vague and generic terms can mask conflicts of interest or cover up inordinate and inappropriate spending. The FEC should develop a list of acceptable descriptions so that one campaign's "flowers" are not another's "fund-raising expenses." Specific details must be required. And, again, senators and Senate candidates should make their expenditure records available electronically, so that the public can hold politicians accountable for any abuses.

Citizens need reliable information to participate effectively in a democracy, and democracy needs that citizen engagement to function as it should. It's a delicate balancing act, with the free flow of information to the public at its core.

The loophole created by this decision could turn into yet another means for unlimited dollars to flow into a system weighted in favor of monied interests over ordinary citizens. While we cannot predict with certainty how newly unfettered groups will respond, we *can* affirm that the existing disclosure requirements are wholly inadequate to deliver the transparency that citizens both need and deserve.